

CONSOLIDATED PROPOSAL FOR DECISION

DOCKET NO. 06-0225820

ENFORCEMENT ACTION AGAINST TEXEAST OPERATING CO., INC. AND/OR C&R OIL, INC. FOR VIOLATION OF STATEWIDE RULES ON THE CANTOS (10579) LEASE, WELL NO. 1, PINE MILLS (WOODBINE) FIELD, IN WOOD COUNTY, TEXAS.

DOCKET NO. 06-0229976

ENFORCEMENT ACTION AGAINST TEXEAST OPERATING CO., INC. AND/OR C&R OIL, INC. FOR VIOLATIONS OF STATEWIDE RULES ON THE NATURAL GAS & OIL (02118) LEASE, WELL NOS. 1A & 1R, TRACE (WOODBINE) FIELD, IN WOOD COUNTY, TEXAS.

APPEARANCES:

FOR MOVANT:

Elaine Moore, Staff Attorney

FOR RESPONDENT:

Tim Burroughs, President

Did not appear

MOVANT:

Enforcement Section, Railroad Commission of Texas

RESPONDENT:

Texeast Operating Co., Inc.

C&R Oil, Inc.

PROCEDURAL HISTORY

Date of Request for Action - Docket No. 06-0225820:	June 12, 2000
Date of Request for Action - Docket No. 06-0229976:	November 2, 2001
Notice of Hearing - Docket No. 06-0225820:	April 3, 2002
Notice of Hearing - Docket No. 06-0229976:	April 1, 2002
Hearing Held:	May 16, 2002
Record Closed:	July 15, 2002
Heard By:	Scott Petry, Hearings Examiner
PFD Circulation Date:	January 16, 2003
Current Status:	Protested

STATEMENT OF THE CASE

This was a Commission-called hearing on the recommendation of the District Office to determine the following:

1. Whether respondent Texeast Operating Co., Inc. and / or respondent C&R Oil, Inc. should be required to plug or otherwise place in compliance with Statewide Rule 14, the Cantos (10579) Lease, Well No. 1 ("Cantos Lease / Cantos well"), Pine Mills (Woodbine) Field, in Wood County, Texas;
2. Whether respondent Texeast Operating Co., Inc. and / or respondent C&R Oil, Inc. should be required to plug or otherwise place in compliance with Statewide Rule 14, the Natural Gas & Oil (02118) Lease, Well Nos. 1A & 1R ("NGO Lease / NGO wells"), Trace (Woodbine) Field, in Wood County, Texas;
3. Whether respondent Texeast Operating Co., Inc. and / or respondent C&R Oil, Inc. should be required to place in compliance with Statewide Rules 3, 8, and 13, the Natural Gas & Oil (02118) Lease, Well Nos. 1A & 1R, Trace (Woodbine) Field, in Wood County, Texas;
4. Whether the respondent has violated provisions of Title 3, Oil and Gas, Subtitles A, B, and C, Texas Natural Resources Code, Chapter 27 of the Texas Water Code, and Commission rules and laws pertaining to safety or prevention or control of pollution by failing to comply with said statutes and Statewide Rule 14;
5. Whether the respondent should be assessed administrative penalties of not more than \$10,000.00 per day for each offense committed regarding said leases and wells; and,
6. Whether any violations should be referred to the Office of the Attorney General for further civil action pursuant to TEX. NAT. RES. CODE ANN. § 81.0534.

Elaine Moore, Staff Attorney, appeared at the hearing representing the Railroad Commission of Texas, Enforcement Section. Tim Burroughs appeared on behalf of respondent, Texeast Operating Co., Inc. (hereinafter "Txeast"). There was no appearance by C&R Oil, Inc. (hereinafter "C&R"). The Enforcement Section's hearing file was admitted into evidence.

Txeast requested additional time to submit an affidavit regarding an eyewitness to the removal of equipment on the subject wells. The examiner agreed to leave the record open to allow Texeast the opportunity to submit late filed exhibits and the record was closed on July 15, 2002. Late-filed exhibits in the form of affidavits were submitted by Texeast and the exhibits were not objected

to by Enforcement or C&R.

In its First Amended Complaint for Docket No. 06-0225820, Enforcement requested that culpability for the violation on the Cantos Lease be assessed and that Texeast and/or C&R be assessed an administrative penalty of \$3,000.00, consisting of \$2,000.00 for one violation of Statewide Rule 14(b)(2) and an enhancement of \$1,000.00 for a prior violation of Commission rules.

In Docket No. 06-0229976, Enforcement requested that culpability for the violations on the NGO Lease be assessed and that Texeast and/or C&R be assessed an administrative penalty of \$10,250.00, consisting of \$250.00 for one violation of Statewide Rule 3(a), \$3,000.00 for one violation of Statewide Rule 8(d)(1), \$2,000.00 for two violations of Statewide Rule 13(b)(1)(b), \$4,000.00 for two violations of Statewide Rule 14(b)(2), and an enhancement of \$1,000.00 for a prior violation of Commission rules.

The examiner finds that C&R exercised physical control over the well at issue in Docket No. 06-0225820, and is therefore responsible for the proper plugging of the Cantos well. The examiner recommends that C&R be assessed a penalty of \$3,000.00 and ordered to plug the Cantos well. The examiner also finds that Texeast's actions, and inaction, warrant a recommended penalty amount of \$500.00. Additionally, the examiner finds that Texeast was the operator of the NGO wells at the time they became inactive and were abandoned, and therefore recommends that Texeast be assessed a penalty of \$10,250.00 and be ordered to place the NGO Lease in compliance with Commission rules and regulations.

BACKGROUND

Unplugged and unused well bores constitute a potential danger to the public's health and safety and must be plugged when mandated by the Commission's rules. Statewide Rule 14 provides that the operator designated on the most recent Commission-approved Form P-4 (Producer's Transportation Authority and Certificate of Compliance), filed on or after September 1, 1997, is responsible for properly plugging the well in accordance with applicable Commission rules and regulations.

Statewide Rule 14 further provides that the operator designated on the most recent Commission-approved Form P-4 (Producer's Transportation Authority and Certificate of Compliance), filed before September 1, 1997, is presumed to be the person responsible for the physical operation and control of the well at the time the well was abandoned or ceased operation.

Statewide Rule 13 requires that wellhead assemblies be used to maintain surface control of the well. Wellhead assemblies are necessary to prevent fluids from being discharged from the wellbore onto the ground surface and to prevent any oil and gas waste in the wellbore from being displaced to the surface by potential influxes of water into the open wellbore.

Statewide Rule 8 provides that persons disposing of oil and gas wastes by any method must have a permit to do so unless authorized by subsections (d)(3) or (e) of Rule 8, or under Rules 9, 46, or 98. These wastes are defined to include materials to be disposed of or reclaimed, which have been generated in connection with activities associated with the exploration, development, and production of oil or gas.

Statewide Rule 3 provides that signs must be posted at each well site and that they must show the name of the property, operator, and other pertinent information. Signs as outlined by Rule 3 provide contact information and speed the containment and remediation of any potential violations or emergencies.

When a violation of Title 3 of the Texas Natural Resources Code relating to safety and/or the prevention or control of pollution is established, the Commission may assess a penalty of up to \$10,000.00 per day for each violation. In determining the amount of the penalty, the Commission is required to consider the respondent's previous history of violations, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the respondent, pursuant to TEX. NAT. RES. CODE ANN. § 81.0531.

EVIDENCE AND POSITIONS OF PARTIES

Texeast designated itself operator of the Cantos well by filing a Railroad Commission Form P-4 with an effective date of August 1, 1996 and an approval date of January 23, 1997. Texeast designated itself operator of the NGO wells by filing Railroad Commission Forms P-4 with effective dates of November 1, 1996 and approval dates of November 13, 1996. Texeast's P-5 Organization Report is currently delinquent and reflects the assertion of Texeast's representative, Mr. Burroughs, that Texeast has closed its operations. Texeast last filed a Form P-5 on April 9, 1997.

In the hearing, Texeast asserted that C&R is the party responsible for the violations on both the Cantos and NGO leases and that the violations are the result of a prior lawsuit and settlement divesting Texeast of its leases. Accordingly, Enforcement contends that C&R may be a party responsible for the proper plugging of the subject wells. Commission records indicate that C&R's P-5 Organization Report is currently delinquent. C&R last filed a Form P-5 on July 27, 2000.

A. Enforcement's Position and Evidence

Enforcement argues that Texeast and/or C&R acted in bad faith in failing to correct the violations of Commission rules and that an administrative penalty should be imposed. Enforcement contends that ownership of the subject leases does not change the responsibilities conferred by Texeast's signing of the Forms P-4.

Statewide Rule 14(b)(2)

In Docket No. 06-0225820, Enforcement asserted a violation of Statewide Rule 14(b)(2) on the Cantos Lease. In support of the assertion, Enforcement submitted Commission inspection reports made on April 19, 1999, February 7, 2000, March 22, 2000, April 14, 2000, November 13, 2000, and April 11, 2002, which show that the Cantos well was shut in and not equipped to inject. The inspection reports for April 19, 1999 and February 7, 2000 showed that the *tubing of the well* was on a vacuum. An inspection report dated November 13, 2000 asserts "0 psi on TBG, CSG, & Surf. CSG", which indicates that the Cantos well had tubing as late as November 13, 2000. The next available inspection report, on April 11, 2002, however, states the well was not equipped for injection and that there was *only a partial joint of tubing* in the well bore. Additionally, Commission records reflect either zero injection activity or an absence of injection reports since at least April 1, 1994. Accordingly, Enforcement contends that the Cantos well has been inactive for over 8 years. The estimated cost to plug the subject well is \$18,700.00.

In Docket No. 06-0229976, Enforcement also asserted violations of Statewide Rule 14(b)(2) on the NGO Lease. Enforcement submitted Commission inspection reports made on September 14, 1999, September 22, 1999, October 26, 1999, December 7, 1999, January 26, 2000, February 25, 2000, March 8, 2000, April 11, 2001, June 5, 2001, July 9, 2001, August 16, 2001, October 15, 2001, October 31, 2001, and April 5, 2002, which show that the NGO wells were shut in and not equipped to produce or inject. Additionally, Commission records reflect either zero production activity or an absence of production reports for Well No. 1A since at least May 1996. Commission records also reflect either zero injection activity or an absence of injection reports for Well No. 1R since the well was permitted as an injection well in October 1996. Accordingly, Enforcement contends that Well No. 1A and Well No. 1R on the NGO Lease have each been inactive for approximately six years. The estimated cost to the State for plugging the NGO Lease, Well Nos. 1A and 1R, is \$22,600.00.

Enforcement asserted that no workovers, re-entries, or subsequent operations had taken place on any of the subject wells on the Cantos or NGO Leases within the twelve months prior to the filing of the complaint and that no W-1X applications were in effect for the subject wells.

Statewide Rule 3(a)

In Docket No. 06-0229976, Enforcement asserted an ongoing violation of Statewide Rule 3(a) on the NGO Lease. In support of this assertion, Enforcement submitted Commission inspection reports made on June 5, 2001, July 9, 2001, August 16, 2001, October 15, 2001, October 31, 2001, and April 5, 2002, which all show that the sign or identification required to be posted at Well No. 1A was missing. Enforcement argued that the lack of a sign at Well No. 1A on the NGO Lease is serious and threatens the public health and safety, as the lack of signs may cause confusion as to the responsible operator to be contacted in the event of a violation or emergency.

Statewide Rule 8(d)(1)

With regard to Docket No. 06-0229976, Enforcement also asserted a violation of Statewide Rule 8(d)(1) involving three tanks on the NGO Lease that had been cut down and removed. An inspection report dated September 14, 1999 indicated that a twelve foot wide tank had been cut down and removed near Well No. 1A, but that the responsible party had left a 22" base section of the tank that contained basic sediment and water. Additionally, near Well No. 1R, two twenty-two foot wide tanks had also been cut down and removed. The responsible party left an 8" base section on each of these tanks. One of the base sections overflowed and approximately ten gallons of basic sediment and water that had been discharged onto the ground.

In follow-up inspection reports on October 26, 1999, December 7, 1999, January 26, 2000, February 25, 2000, and March 8, 2000, it was noted that oil remained on the ground where the tanks had been "removed". An inspection report dated April 11, 2001, however, indicates that the tank bottoms had been buried with sand and that oil from one of the buried tanks was found to be seeping to the surface. Additional follow-up inspection reports made on June 5, 2001, July 9, 2001, August 16, 2001, October 15, 2001, October 31, 2001, and April 5, 2002, showed that no remediation of the affected areas had taken place and that oil was still evident on the surface.

Statewide Rule 13(b)(1)(B)

Finally, Enforcement asserted in Docket No. 06-0229976 that the NGO wells were in violation of Statewide Rule 13(b)(1)(B), which requires that wellhead assemblies be used on wells to maintain surface control of the wells. In support of this assertion, Enforcement submitted Commission inspection reports made on September 14, 1999, September 22, 1999, October 26, 1999, December 7, 1999, January 26, 2000, February 25, 2000, March 8, 2000, April 11, 2001, June 5, 2001, July 9, 2001, August 16, 2001, October 15, 2001, October 31, 2001, and April 5, 2002, that show Wells No. 1A & 1R had casing open to the atmosphere and that the wells had no wellhead control assemblies. Enforcement argued that the lack of wellhead assemblies is serious and threatens the public health

and safety, as wells left uncontrolled may discharge wastes onto the surface, may cause pollution, and may affect the health of humans and animals.

B. C&R's Position and Evidence

Despite the fact that C&R was named and served with notice in both dockets, C&R did not appear at the hearing.

C. Texeast's Position and Evidence

Texeast asserted that it did not maintain control of the subject wells and that its evidence rebutted the presumption that it is liable for plugging the subject wells on the Cantos and NGO Leases. More specifically, Texeast asserted that it was not responsible for the subject wells because a prior judgment against it and a signed settlement agreement between the parties divested it of the Cantos and NGO Leases and placed the responsibility for the subject wells with C&R. Additionally, Texeast asserted that C&R had failed to carry out its obligations and had failed to properly assume Form P-4 responsibility for the subject wells.

In support of its contention, Texeast submitted a judgment from the 114th District Court, a document entitled, "Compromise Settlement Agreement and Release of All Claims", and a document entitled "Assignment of Mineral Interests and Bill of Sale". These documents were submitted as part of Enforcement's file that was admitted into the record. Texeast also submitted a signed, two-signature Form P-4 for the Cantos lease that was not accepted and processed by the Commission¹, as well as a late-filed affidavit containing an eyewitness account of C&R's agents stripping the well of all equipment on the Cantos well. Additionally, Texeast submitted an affidavit as a late-filed exhibit that asserted that C&R had removed a pumping unit from another offsetting lease and had attempted to place it on the NGO Lease, Well No. 1R.

Affidavits

With regards to the affidavits, neither was objected to by Enforcement. In Docket No. 06-0225820, the signed, notarized affidavit by Texeast's contractor was submitted as a late-filed exhibit

¹Texeast asserts that, while the Form P-4 was signed by representatives from both Texeast and C&R, an incorrect lease number prevented the processing of the Form P-4. The Cantos Lease's lease number is 10579, but the lease number on the Form P-4 is 10569. Lease number 10569 is actually for the Carolyn Schmidt Unit, which did not have any wells for the time period 1996-1998, and is not a part of this docket. It should also be noted that, given the Cantos well's long period of inactivity, a Form W-1X plugging extension may have been necessary for the Form P-4 transfer to be approved. The record does not, however, mention a Form W-1X being filed for the Cantos well at the time of the attempted transfer.

and states, in part, that in:

...the months of January or February of 2002....Moon Operating Inc., told me that Ron Priestly had called them to inform them that he would be on location to Plug and Abandon the Cantos well (RRC#10579). I then witnessed a pulling unit that was hired by Ron Priestly strip the well of all equipment. After witnessing this operation, I then proceeded to call Texeast Operating, Inc. to inform them of this activity. I also then called Joe Hull twice with the Texas Railroad Commission in the Kilgore office and informed him of this activity as well.

Texeast's representative, Tim Burroughs, asserted at the hearing that tubing and equipment from the Cantos well was pulled by C&R and that C&R, therefore, exercised control over the subject well.

In Docket No. 06-0229976, Texeast submitted a signed, notarized affidavit by Texeast's president, Tim Burroughs, that states, in part, that:

Ron Priestly, C&R Oil, Co., removed the Lufkin 160 pumping unit from the Earl Lee well #401 on to the Natural Gas & Oil well #1R to pursue putting that well into production... These actions by C&R Oil with regards to the #1R well created a clear assumption of operational responsibility for the Natural Gas & Oil lease. C&R was unable to initiate pumping on the #1R.... Consequently, C&R removed the Lufkin 160 pumping unit from the #1R, and sold it....

It should be noted, however, that the affidavit submitted by Texeast for the NGO Lease did not assert eyewitness testimony. In the hearing, Texeast's representative, Mr. Burroughs, asserted that C&R had removed equipment from the NGO Lease, but he did *not* state that he, or his agents, had first hand, eyewitness knowledge of the removal. Accordingly, in Enforcement's reply to the late filed exhibits, it stated that "...although hearsay, Enforcement does not object as these same assertions were made by Texeast at the hearing."

Forms P-4 & Attempts to Change the Designated Operator

Txeast also submitted, in Docket No. 06-0225820, the aforementioned signed, two-signature Form P-4 for the Cantos lease that was not accepted and processed by the Commission. The two signature Form P-4 that was submitted included the Cantos well² and was signed by C&R and Texeast on April 23, 1999. Texeast asserted that the Form P-4 for the Cantos lease was signed in conjunction with the Compromise Settlement Agreement and Release of All Claims, which was also signed by C&R and Texeast on April 23, 1999. In Docket No. 06-0229976, however, Texeast stated

²Txeast actually submitted four attempted P-4's that were signed on April 23, 1999. In addition to the P-4 for the subject Cantos (10579) lease, P-4's for the Cantos (11119) Lease, Earl Lee Unit (04369) Lease, and Collins #1 (no lease number indicated) Lease were also placed into the record.

that, while it had a copy of a two signature Form P-4 on the NGO Lease, it was unable to locate the P-4 in question and was therefore unable to submit it into the record.

According to Texeast, the signature on the Form P-4 is integrally tied to a prior civil action between C&R and Texeast. It was Texeast's argument that the Compromise Settlement specifically stated that C&R would "...execute any and all documents necessary to transfer the operation and control of said leases or units according to the records of the Texas Railroad Commission." Despite Texeast's repeated attempts to get C&R to assume the Form P-4 plugging responsibility, however, a corrected Form P-4 was never submitted by C&R and processed by the Commission. Texeast stated that C&R's failure to follow through with its obligations resulted in the problems in both of the current dockets.

Additionally, Texeast referenced correspondence that was included in Enforcement's file and that discussed prior attempts by Texeast to have the Forms P-4 for the Cantos and NGO wells changed over to C&R. In addition to the signed two-signature Form P-4 on the Cantos well that was not processed by the Commission, the file included correspondence dated October 19, 2000 that was addressed to Timothy Poe of the Commission's P-5 Department. The letter asserts Texeast's claims that C&R should be designated the proper operator for both of the subject leases and that Texeast was barred from the Cantos and NGO leases due to the aforementioned Compromise Settlement Agreement. Additional correspondence included a letter, dated March 13, 2002, to the Railroad Commission, which requested that a one signature "force" Form P-4 be approved to change the operator of the Cantos and NGO wells to C&R.

Court Judgment, Compromise Settlement, & Assignment

The judgment that Texeast refers to in its case-in-chief refers to an order in the 114th District Court that found Texeast liable for constructive fraud, securities fraud, and real estate fraud involving, among others, Texeast's "...failing to rework the 1R Disposal Well and failing to rework the Collins 1A Well..." The judgment itself, however, does not clarify if the 1R Disposal Well is indeed on the *NGO Lease* that is the subject of Docket No. 06-0229976 and only refers, in the text of the actual judgment, to the Collins Lease. In any case, the judgment does *not* order the transfer of the NGO lease from Texeast to C&R. Rather, the judgment entitles C&R to receive from Texeast restitution totaling in excess of \$350,000.00, including costs of the suit and interest.

The Compromise Settlement was submitted in the record for both of the current dockets. While Texeast asserted that the judgment and settlement agreement was applicable to both dockets, the Compromise Settlement states that Texeast agrees to assign its interest in the Earl Lee Unit, its working interest in the leases "...presently known as the TBX Resources/Cantos Leases...", and its interest in the leases "...comprising the TBX Resources/Collins lease..." The Compromise Settlement

does *not* mention the NGO Lease. The Compromise Settlement further states that "...this Compromise Settlement Agreement contains the entire Agreement... between the parties as a settlement of the judgment of the court.

Finally, Texeast submitted an Assignment of Mineral Interests and Bill of Sale, which the respondent also asserted applied to both dockets. The document is signed by Tim Burroughs and assigns "Subject Properties, including the Earl Lee and Cantos leases, and all of those oil, gas and mineral leases, related property and contract rights as set forth in Exhibits iAj [sic] and iBj [sic] attached hereto or described above." Exhibit A and Exhibit B, however, indicate the names of certain lessors, and do not indicate whether any of these lessors are actually for the NGO Lease.

EXAMINER'S OPINION

This situation is one where neither party is completely free from culpability. The P-4 presumption of operatorship can be rebutted by a showing that a different entity assumed physical operation and control of a well, after operations by the P-4 operator ceased. The totality of the evidence submitted by Texeast showed that the "operator" of the Cantos well was actually C&R because C&R was "...responsible for the physical operation and control of [the] well at the time the well [was] about to be abandoned or cease[d] operations."³ However, Texeast has *not* shown by a preponderance of the evidence that C&R was responsible for the physical operation and control of the NGO Lease and wells.

With regard to Docket No. 06-0225820, C&R is responsible for plugging the Cantos well because, according to a preponderance of the evidence, it was the last party to assume "responsibility for the physical operation and control" of the well. Texeast, on the other hand, is responsible in this docket because its inaction and failure to plug the well as mandated by the Texas Natural Resources Code § 89.011, Duty of Operator, contributed to the situation where the Cantos well in Wood County remained unplugged for at least five years prior to the hearing and contributed, by its actions and inaction, to the likelihood of increased pollution.

With regard to Docket No. 06-0229976, however, Texeast fails to rebut the presumption of operatorship and fails to sufficiently show that a different entity assumed physical operation and control of a well after operations by Texeast on the NGO Lease ceased. Texeast asserts that C&R exercised physical operation or control over the NGO Lease, but the lack of a reference to the NGO Lease in the judgment, assignment, or settlement agreement, combined with the lack of a two-signature as alleged by Texeast and a lack of eyewitness testimony all suggest otherwise.

³Texas Natural Resources Code, § 89.002(a)(2), 1993 version.

Culpability for the Cantos Well

Although the entity shown as the P-4 operator on Commission records is presumed to be the operator for purposes of plugging responsibility, that presumption can be rebutted. The evidence, including the inspection reports, the affidavit regarding the eyewitness testimony, the removal of tubing and equipment from the Cantos well, and the documentation indicating ownership of the subject lease by C&R, all *combine* to reflect that C&R assumed control of the well and therefore became operator of the subject well as defined by the 1993 version of Texas Natural Resources Code § 89.002(a)(2).

The 1993 version of Texas Natural Resources Code § 89.002(a)(2) reads, in part, “‘Operator’ means a person who assumes responsibility for the physical operation and control of a well at the time the well is about to be abandoned or ceases operations....” Abandonment, for purposes of the 1993 version of §89.002, is permanent and final abandonment and not merely the subjective intent of a particular individual not to continue to produce a well. A well abandoned by one operator may be "revived" by the actions of another operator. *See, e.g.,* Oil & Gas Docket No. 1-93,927, *Enforcement Action Against Permeator Corp. and/or Woodstream Village Corp.* (Order signed Dec. 10, 1990). C&R’s actions, for purposes of this docket, “revived” the subject well.

While a preponderance of the evidence suggests that C&R is ultimately responsible for the physical operation and control of the well, the evidence does not indicate exactly *when* C&R exercised this control. The affidavit of Texeast states that agents of C&R removed equipment from the well sometime between January and February 2002, but did not specify exactly *when C&R first exercised “control” of the subject well*. This affidavit regarding the removal of tubing is consistent with the Commission inspection reports, of which the two most recent inspection reports are dated November 13, 2000 and April 11, 2002. On November 13, 2000, the inspector reported that there was tubing in the Cantos well. Approximately two months after the purported removal of the equipment from the Cantos well, however, the April 11, 2002 inspection report states that the well was no longer equipped for injection and that there was only a partial joint of tubing left in the well bore. The inspection reports help to reinforce the content of the affidavit and the evidence, when taken in its totality, suggests that C&R exercised physical operation and control of the well by at least some time in February 2002.

Physical control of the subject lease by C&R prior to January or February 2002 was not supported by the evidence at the hearing. Therefore, Texeast had the authority and the responsibility to control this well from the date that the Form P-4's were approved, January 23, 1997, to at least January 2002. Nevertheless, C&R was the last entity to enter the Cantos well bore and C&R last maintained control of the well. A review of the Commission archives of enforcement cases indicates that in instances in which an identified entity, not acting as agent for the operator of record, entered

a well bore and pulled downhole equipment, the Commission has found that the entity that entered the wellbore assumed responsibility for the physical operation and control of the well and was therefore responsible for plugging the well.⁴ Accordingly, it is the examiner's opinion that C&R assumed responsibility for the physical operation and control of the Cantos well and C&R is therefore responsible for its proper plugging.

Texeast, on the other hand, maintained control of the subject well from at least January 23, 1997, to at least the beginning of January 2002 and must be held accountable for its contribution to the current situation. While Texeast may or may not have had a contractual claim against C&R for its refusal to follow through on its settlement agreement, such contractual claims are outside the authority and jurisdiction of the Commission. Instead, the proper course of action would have been for Texeast to follow through with its regulatory responsibilities, with the assistance of law enforcement personnel and §89.044 of the Texas Natural Resources Code⁵ if necessary, and to plug the subject well.⁶ Respondent Texeast did not do this, however, and its inaction has led to a situation where the Cantos well remained unplugged for an additional three years after the settlement agreement was signed.

During the hearing, Texeast was asked by Enforcement if it was aware of the ramifications of § 89.044 and Texeast stated that it was not. Texeast was unable to produce a satisfactory answer as to its failure to fulfill its regulatory duty, other than to say that it thought the signed agreement and court order had placed the liability upon C&R. Additionally, in terms of good faith, it is noted that correspondence from Texeast to the P-5 department and single signature P-4 requests by Texeast indicate that it *did* make attempts to have C&R acknowledge its responsibilities.

Even assuming that Texeast was legitimately making good faith attempts to place the P-4 responsibility with C&R, however, it does not excuse Texeast from its regulatory responsibility. At the time of Texeast's P-4 signing, the well had not injected in almost three years and the well was out of compliance when Texeast received the Form P-4 from a prior operator. It was incumbent upon Texeast to restore injection activity into the subject well, to file a proper W-1X plugging extension, or to commence plugging operations. A reasonably prudent operator would have realized that this

⁴ *See e.g.* Oil & Gas Docket No. 03-0201927, *Enforcement Action Against Brent Explorations, Inc. and/or Edward D. Lara d/b/a L&L Investments* (Order signed Dec. 12, 1995); Oil & Gas Docket No. 1-97,294, *Enforcement Action Against TAS, Inc. and/or Comet Operating Co., et al.* (Order signed April 25, 1995); Oil & Gas Docket No. 7B-0204788, *Enforcement Action Against Encino Exploration, Inc. and/or Shamrock Minerals Corp.* (Order signed Feb. 6, 1995); Oil & Gas Docket No. 7C-94,336, *Enforcement Action Against PK-Cat Operating Co. and/or M/G Equipment Co.* (Order signed Jan. 28, 1991); Oil & Gas Docket No. 7C-94,337, *Enforcement Action Against PK-Cat Operating Co. and/or M/G Equipment Co.* (Order signed Jan. 28, 1991).

⁵ § 89.044 of the Texas Natural Resources Code states, "...the operator or the nonoperator, on proper identification, may enter the land of another for the purpose of plugging or replugging a well that has not been properly plugged."

⁶ A cause of action for indemnification, if any, would be for a civil court of competent jurisdiction to decide.

well was out of compliance for a substantial period of time and that the danger of pollution existed.

Culpability for the NGO Wells

As mentioned earlier, the entity shown as the P-4 operator on Commission records is presumed to be the operator for purposes of plugging responsibility, but that presumption can be rebutted. With regard to the NGO Lease, Texeast was unable to establish, by a preponderance of the evidence, that an entity other than Texeast assumed control of the NGO wells.

The main thrust of Texeast's defense is that the 114th District Court judgment, and the attending Compromise Settlement and Assignment, absolved it of its regulatory responsibility. This is simply not the case, however, as regulatory responsibility for the subject wells is independent of ownership or other private contractual matters concerning the property. As the Texas Natural Resources Code points out, ownership is not a prerequisite for plugging responsibility. The aforementioned §89.044 of the Texas Natural Resources Code states that, "...the operator or the nonoperator, on proper identification, may enter the land of another for the purpose of plugging or replugging a well that has not been properly plugged." It is well settled that a person may retain plugging responsibility for a well even though that person does not have an ownership interest in it.

For the sake of argument, however, even if one were able to show that ownership was indicative of the regulatory responsibility, Texeast was unable to prove at hearing that the NGO Lease was part of the prior lawsuit or that the NGO lease had ever been assigned to C&R. Neither the Compromise Settlement or assignment even mentions the NGO Lease. Further, Texeast asserted that the NGO Lease was part of the general transfer of leases that took place as part of the settlement, but it was unable to produce an unprocessed two-signature P-4 like the one proffered in the Cantos docket. Texeast had asserted that the P-4's for all of the leases were signed at the same time that the Compromise Settlement was signed, but the absence of the NGO Forms P-4, that was presumably signed at the same time as the Cantos Form P-4, lessens the credibility of Texeast's argument.

Finally, while the Cantos docket contains an affidavit asserting eyewitness testimony of C&R pulling equipment, the affidavit submitted regarding the NGO Lease has bald assertions that do not indicate direct knowledge of C&R exercising physical control of the NGO wells. Rather, the affidavit asserts that C&R removed equipment from an offsetting lease to put one of the NGO wells online, but that C&R was "...unable to initiate pumping on the #1R". Indeed, the information provided by Texeast gives no indication whatsoever of any downhole work being done on the NGO wells. The evidence submitted does not indicate that *any* downhole work was performed on the NGO wells, and the evidence fails to sufficiently show that C&R ever exercised "...control of [the] well at the time the

well [was] about to be abandoned or cease[d] operations.”⁷

Therefore, the Form P-4 presumption has not been overcome in the NGO docket, and Texeast was unable to establish a sufficient defense to the violations alleged by Enforcement in Docket No. 06-0229976. The violations of Statewide Rules 3, 8, 13 and 14 on the NGO Lease constitute a hazard to the health or safety of the public. By allowing the wells to remain unplugged for a period of time in excess of Commission guidelines and out of compliance with Commission rules regarding pollution, wellhead control, and identification, Texeast has created a situation that poses a hazard to the public health and safety.

EXAMINER’S RECOMMENDATION

In Docket No. 06-0225820, the examiner recommends that, while a preponderance of the evidence establishes that C&R was the last person or organization to exercise physical operation and control over the Cantos well, Texeast should share in the responsibility for the violations and also be required to pay an administrative penalty. Under these circumstances, Texeast should be ordered to pay an administrative penalty in the amount of \$500.00, which includes a penalty of \$500.00 for the one violation of Statewide Rule 14(b)(2). Additionally, C&R should be ordered to plug the Cantos well and to pay an administrative penalty of \$3,000.00, which includes a penalty of \$2,000.00 for the Rule 14(b)(2) violation on the subject well and an enhancement of \$1,000.00 for a prior final order.

In Docket No. 06-0229976, the examiner finds Texeast was the last entity to exercise physical operation and control over the NGO wells. It is the examiner’s recommendation that Texeast be ordered to pay an administrative penalty in the amount of \$10,250.00, which includes a penalty of \$4,000.00 for two violations of Statewide Rule 14(b)(2), \$250.00 for one violation of Statewide Rule 3(a), \$3,000.00 for one violation of Statewide Rule 8(d)(1), \$2,000.00 for two violations of Statewide Rule 13(b)(1)(b), and \$1,000.00 for an enhancement for a prior final order. Additionally, it is recommended that Texeast be ordered to plug the NGO Lease, Well Nos. 1A and 1R.

Based on the record in this docket, the examiner also recommends adoption of the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Texeast Operating Co., Inc. was given at least 10 days notice of this proceeding by certified, first-class mail, addressed to its most recent Form P-5 (Organization Report) addresses. Tim Burroughs, president of Texeast, appeared at the scheduled time and place for the hearing and

⁷Texas Natural Resources Code, § 89.002(a)(2), 1993 version.

presented evidence.

2. C&R Oil, Inc. was given at least 10 days notice of this proceeding by certified, first-class mail, addressed to its most recent Form P-5 (Organization Report) addresses. C&R did not appear at the scheduled time and place for the hearing.
3. Texeast designated itself operator of the Cantos (10579) Lease, Well No. 1 ("Cantos Lease/Cantos well"), Pine Mills (Woodbine) Field, in Wood County, Texas, by filing a Railroad Commission Form P-4 (Producer's Transportation Authority and Certificate of Compliance), effective August 1, 1996, approved January 23, 1997.
4. Texeast designated itself operator of the Natural Gas & Oil (02118) Lease, Well Nos. 1A & 1R ("NGO Lease/NGO wells"), Pine Mills (Woodbine) Field, in Wood County, Texas, by filing Railroad Commission Forms P-4 (Producer's Transportation Authority and Certificate of Compliance), with effective dates of November 1, 1996, and approval dates of November 13, 1997.
5. Well No. 1 on the Cantos (10579) Lease and Well Nos. 1A and 1R on the Natural Gas & Oil (02118) Lease are not properly plugged and there are no Form W-1X plugging extensions in effect for any of the wells.
6. Well No. 1 on the Cantos lease is an injection well that is currently inactive and has been inactive for more than 12 months.
 - a. Commission inspections of the Cantos Lease were conducted on April 19, 1999, February 7, 2000, March 22, 2000, April 14, 2000 and November 13, 2000. At the time of each of the inspections, the Cantos well was shut in and not equipped to inject.
 - b. There has not been any reported injection activity for the Cantos well since March 31, 1994.
7. Well No. 1R on the NGO Lease is permitted as an injection well, is currently inactive, and has been inactive for more than 12 months.
 - a. Commission inspections of the NGO Lease were conducted on September 14, 1999, September 22, 1999, October 26, 1999, December 7, 1999, January 26, 2000, February 25, 2000, March 8, 2000, April 11, 2001, June 5, 2001, July 9, 2001, August 16, 2001, October 15, 2001, October 31, 2001, and April 5, 2002. At the time of each of the inspections, the NGO Well No. 1R was shut in and not equipped to inject.
 - b. The NGO Well No. 1R has never been used for injection since the well was permitted in October 1996.

8. Well No. 1A on the NGO Lease is currently inactive and has been inactive for more than 12 months.
 - a. Commission inspections of the NGO Lease were conducted on September 14, 1999, September 22, 1999, October 26, 1999, December 7, 1999, January 26, 2000, February 25, 2000, March 8, 2000, April 11, 2001, June 5, 2001, July 9, 2001, August 16, 2001, October 15, 2001, October 31, 2001, and April 5, 2002. At the time of each of the inspections, the NGO Well No. 1A was shut in and not equipped to produce.
 - b. There has not been any production reported to the Commission for Well No. 1A since at least May 1996.
9. Usable quality groundwater in the area is likely to be contaminated by migrations or discharges of saltwater and other oil and gas wastes from the Cantos and NGO wells. Unplugged wellbores constitute a cognizable threat to the public health and safety because of the probability of pollution.
10. The sign identifying Well No. 1A on the NGO Lease has been missing since on or before June 5, 2001.
11. Failure to properly identify a well by the posting of the sign required by Statewide Rule 3 has the potential for causing confusion and delay in remedying a violation or emergency and poses a threat to the public health and safety.
12. An unauthorized discharge occurred on the NGO Lease on or before September 14, 1999. Three tanks on the lease had been cut down and the tank bottoms had been left standing. The tank bottoms had basic sediment and water in them, 10 gallons of which had run off and contaminated the surface. Between September 14, 1999 and April 11, 2001, the tanks were buried and oil was observed seeping to the surface. The spill has not been remediated.
13. An unauthorized discharge or disposal of oil, saltwater, basic sediment or other oil and gas waste is a potential source of pollution to surface and subsurface waters if not remediated to prevent seepage and run-off.
14. Well Nos. 1A and 1R on the NGO Lease have had casing open to the atmosphere, with no well head control assemblies, since on or before September 14, 1999.
15. Failure to maintain proper well head controls is serious and a hazard to the public health and safety, as wells left uncontrolled or left open to the atmosphere may discharge oil and gas waste onto the surface or surface or subsurface waters, and may cause pollution.
16. C&R and Texeast entered into a settlement agreement on April 23, 1997 that purportedly gave any legal claim that Texeast possessed in the Cantos Lease to C&R. The settlement agreement

- does not purport to transfer the NGO Lease to C&R.
17. Between January and February 2002, a representative of C&R was observed stripping the Cantos well of equipment.
 18. A Commission inspection conducted on November 13, 2000 indicates that tubing remained in the Cantos well.
 19. A Commission inspection conducted on April 11, 2002 indicates that the well was no longer equipped for injection and that there was only a single, partial joint of tubing left in the well bore.
 20. The record shows previous violations of Commission rules by both respondents.
 - a. In Oil & Gas Docket No. 06-0214908, respondent Texeast was found in violation of Statewide Rule 14(b)(2) and a final order was served on May 28, 1999;
 - b. In Oil & Gas Docket No. 06-0226878, respondent C&R was found in violation of Statewide Rule 9(1) and a final order was served on August 10, 2001;
 21. The estimated cost to the State for plugging the Cantos Lease, Well No.1 is \$18,700.00.
 22. The estimated cost to the State for plugging the NGO Lease, Well Nos. 1A and 1R, is \$22,600.00.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued by the Railroad Commission to appropriate persons legally entitled to notice.
2. All things necessary to the Commission attaining jurisdiction over the subject matter and the parties in this hearing have been performed or have occurred.
3. Texeast exercised physical operation and control of the Cantos Well No. 1, pursuant to Texas Natural Resources Code §89.002(a)(2) [1993 version], from at least January 23, 1997 to at least some time between January and February 2002.
4. C&R Oil, Inc. exercised physical operation and control of the Cantos Lease, Well No. 1, pursuant to Texas Natural Resources Code §89.002(a)(2) [1993 version], from at least some time in January or February 2002 to the present.
5. C&R Oil, Inc. has the primary responsibility for complying with Rule 14 (Tex. R.R. Comm'n,

- 16 TEX. ADMIN. CODE §3.14) and with Chapter 89 of the Texas Natural Resources Code as well as other applicable statutes and Commission rules relating to the Cantos well.
6. The Cantos Lease Well No. 1 has been out of compliance with Statewide Rule 14(b)(2) since at least March 31, 1995.
 7. Texeast is the operator of the Natural Gas & Oil Lease, Well Nos. 1A & 1R, as defined by Commission Statewide Rule 14 and §89.002 of the Texas Natural Resources Code.
 8. Texeast has the primary responsibility for complying with Rule 14, and Chapter 89 of the Texas Natural Resources Code as well as other applicable statutes and Commission rules relating to the Natural Gas & Oil Lease, Well Nos. 1A & 1R.
 9. The NGO Lease Well No. 1R has been out of compliance with Statewide Rule 14(b)(2) since at least October 1, 1997.
 10. The NGO Lease Well No. 1A has been out of compliance with Statewide Rule 14(b)(2) since at least May 1, 1997.
 11. The NGO Lease Well No. 1A has been out of compliance with Statewide Rule 3(a) since at least June 5, 2001.
 12. The NGO Lease has been out of compliance with Statewide Rule 8(d)(1) since at least September 14, 1999.
 13. The NGO Lease Well Nos. 1A and 1R have been out of compliance with Statewide Rule 13(b)(1)(B) since at least September 14, 1999.
 14. Texeast's failure to timely plug the subject wells on the Cantos and NGO leases when required is a violation of Title 3 of the Texas Natural Resources Code, Chapter 27 of the Texas Water Code, and Commission rules and laws pertaining to safety or prevention or control of pollution.
 15. C&R's failure to timely plug the subject well on the Cantos lease when required is a violation of Title 3 of the Texas Natural Resources Code, Chapter 27 of the Texas Water Code, and Commission rules and laws pertaining to safety or prevention or control of pollution.
 16. The documented violations committed by Texeast are a hazard to the public health and demonstrates a lack of good faith pursuant to TEX. NAT. RES. CODE ANN. §81.0531(c).
 17. The documented violation committed by C&R Oil, Inc. is a hazard to the public health and demonstrate a lack of good faith pursuant to TEX. NAT. RES. CODE ANN. §81.0531(c).

RECOMMENDATION

The examiner recommends that the above findings and conclusions be adopted and the attached orders approved. It is recommended that respondent Texeast be ordered to plug Well Nos. 1A & 1R on the Natural Gas & Oil Lease and place the lease in compliance with all applicable Commission rules. It is also recommended that the respondent Texeast be ordered to pay an administrative penalty in the amount of FIVE HUNDRED DOLLARS (\$500.00) in Docket No. 06-0225820 and TEN THOUSAND TWO HUNDRED FIFTY DOLLARS (\$10,250.00) in Docket No. 06-0229976.

Further, it is recommended that respondent C&R be ordered to plug Well No. 1 on the Cantos Lease and to pay an administrative penalty in the amount of THREE THOUSAND DOLLARS (\$3,000.00) in Docket No. 06-0225820.

Respectfully submitted,

Scott C. Petry
Hearings Examiner